United States District Court
Middle District of Florida
Post Office Box 53135
Jacksonville, Florida 32201

Susan H. Black
Chief Judge

March 13, 1990

The Honorable Bob Graham
United States Senator
241 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Graham:

I appreciate the opportunity to comment on the proposed Civil Justice Reform Act of 1990, S.2027. The Judges of the Middle District of Florida have requested that I respond on behalf of the Middle District courts. My comments will relate to events which have transpired in the Middle District, although some of the observations might apply to other districts. You will be receiving letters also from several judges who wanted to submit responses personally.

The overall philosophy underlying the legislation is excellent. The just, speedy, and inexpensive resolution of civil actions pending before us is a great concern, and we agree that reducing the costs and delays associated with civil litigation will make the system more efficient and more accessible.

In furtherance of this philosophy, the Judges of the Middle District have already implemented procedures that address the goals of reducing the costs and delays associated with civil litigation. Over the past several years, through the use of case-management procedures, the Middle District courts have been able to decrease the amount of delay experienced by civil litigants. For example, in 1982, with a civil filing rate of 423 cases per judge, the median time from filing to disposition was eleven months. In 1989, with a civil filing rate of 537 cases per judge, the median time from filing to disposition was only nine months. This reduction, in spite of a criminal caseload which nearly doubled during that period, is due not only to the use of case-management techniques but also as a result of the determined efforts of the Middle District courts to reduce civil case delay by adopting innovative alternative dispute resolution programs.

The Middle District became the fourth federal district to adopt a program of mandatory arbitration of selected civil cases before a panel of attorney arbitrators. This alternative dispute resolution program, now in its sixth year, continues to account for the early disposition of fully fifteen percent of the Middle District's civil cases, with attendant savings in litigant costs and bench time. In November of 1989, we adopted a formal program of court-annexed mediation. Most civil cases which have not qualified for arbitration are candidates for mediation by one of several attorneys certified by the court for that purpose. While this program has not been in effect for a period long enough to permit meaningful formal analysis, we do know that nearly eighty percent of the civil cases referred to mediation in a 1989 pilot project in the Middle District were disposed of through that process.

It is my understanding that you have written to the Clerk of Court and he will be providing you with a profile of the Middle District which might be of assistance in placing these comments in the context of this particular district. I would respectfully suggest that the statistics reflect that nine judges (there is presently one vacancy) serving fifty-five percent of the population of Florida, are effectively using case-management techniques. This is not to say that we cannot benefit from new ideas; as evidenced by the fact that all of us have attended, and some have taught, courses offered by the Federal Judicial Center in efficient case management.

While we will continue to be innovative and receptive to new ideas, we would suggest that to require the development of more plans, systems, and reports addressing a problem that is already being addressed, will only create duplicity and confusion. In the Middle District, the major cause of delay is not technique, but rather time. I hesitate to state the obvious, but it is, in large part, our enormous criminal caseload which makes it difficult to imagine how the Middle District's limited resources can be stretched any thinner. This is especially true in light of Congress' continual expansion of our subject matter jurisdiction.

We have one further reservation about the bill which relates specifically to reducing the delay and expense of civil litigation. Woven throughout the legislation is the deliberate limitation of the use of magistrates in civil case management. Such a limitation on the use of magistrates will undermine a resource now being effectively utilized and make it even more difficult for us to manage our civil caseload. Congress has in the past supported the use of magistrates as a tool to more quickly and efficiently process civil cases. (For your information, I have enclosed a brief history of the Magistrate's Act.) Magistrates are a key resource in efficient management of civil cases in the Middle District.

The Judges of the Middle District reiterate their appreciation for your request for comments. We would be pleased to provide further information or assistance, including a line-by-line analysis of the bill if you deemed it necessary.

Sincerely yours,

SUSAN H. BLACK

Enclosure

cc: All Middle District Judges
bc: Magistrates
Mr. David L. Edwards

Ms. Karen Siegel

LEGISLATIVE HISTORY

The legislative history of the Federal Magistrates Act of 1968 shows the intention of Congress to develop a system that would allow each district court to respond to its particular circumstances and needs. This was to be accomplished by allowing each court to decide, within Constitutional and statutory limits, the responsibilities and duties of their United States Magistrates. These magistrates were to be judicial officers of the district court and not a distinct entity. The jurisdiction exercised by magistrates was not to be that of a separate court or tribunal but the jurisdiction of the district court itself. Most magistrates were to perform judicial duties which in their absence would have to be performed by Article III district judges. The Act generally provided that magistrates could be given jurisdiction to: (1) exercise the powers and duties previously exercised by U. S. Commissioners; (2) try minor criminal offenses, and (3) perform such additional duties to assist district judges that were not inconsistent with the Constitution and laws of the United States. These authorized duties would only be performed by a magistrate if properly delegated.

Since the enactment of the 1968 Act, Congressional authorization for additional district judges has continually lagged behind the needs. Magistrates have in part filled that void by relieving district judges of judicial responsibilities and performing them in their place. Differences in each district courts' case load and case mix compelled Congress to leave the implementation of the Magistrate system to each district court because of the variation in their needs.

Authorized funding for the 1968 Act commenced in 1970 and 1971. The two-decade history of the Act indicates that the flexibility of the division of labor between district judges and magistrates varies according to the distinctive circumstances and needs of each district court as congress originally envisioned. In some instances courts and individual judges have assigned all responsibilities for handling discovery motions and scheduling conferences to magistrates. Other judges have selectively made such assignments on a case-by-case basis, and still others have never delegated these functions.

Beginning in 1974, because of judicial decisions by appellate courts and the Supreme Court regarding the delegation of handling prisoner petition cases to magistrates, Congress once again considered the jurisdictional issue. Within the next two years there was an increase case backlog due to the implementation of the Federal Speedy Trial Act which, for awhile, forced many district judges to handle only criminal cases while civil cases lay dormant. As a result, Congress passed the Federal Magistrates Act of 1976 specifically authorizing district

courts to delegate to magistrates, if they desired, non-dispositive pre-trial motions, the submission of proposed findings and recommendations to district judges on dispositive pre-trial motions and prisoner petition cases, after conducting an evidentiary hearing if necessary.

By the late 1970's Congress concluded that overburdened district courts needed to be given greater authority, if they desired, to further divide judicial labors between judges and magistrates by authorizing the delegation to a magistrate, upon consent of the parties, the trial of civil cases, or the handling of any dispositive civil motion. Congress also concluded that broadening criminal trial jurisdiction of magistrates, when the defendant consents, from minor offense to all misdemeanors would assist in a speedier termination of cases. These concepts were incorporated in the Federal Magistrates Act of 1979 which vastly expanded the delegation of jurisdiction to magistrates. However, as previously mentioned, the exercise of any jurisdiction by a magistrate requires affirmative delegation through either a local court rule or the promulgation of a specific order by an individual district judge.

In recognition of the important role played by magistrates, in the late 1980's Congress authorized a substantial increase in their salaries which is directly linked to the salary of a district judge. Congress also provided an enhanced retirement system in order to attract and retain highly qualified individuals to fill these positions.

Pursuant to the Judicial Improvement and Access Act of 1989, the Federal Courts Study Committee is currently in the process of drafting its report to the President and Congress which is due April 1, 1990. Their tentative recommendations submitted for public comment on December 22, 1989, recognized that:

> "The federal magistrates system plays a vital role in the work of the district courts. While each federal court employs magistrates in different ways, their existence helps keep the system afloat. . . . . The district courts clearly need the assistance of the magistrates in order for judges to focus on those matters that require Article III attention."

That draft recommends that the Judicial Conference of the United States conduct an in-depth study of the constitutional perimeter of the utilization of magistrates with specificity given to their future role and "proposed principles for defining the proper limits of that role."

The beauty of the Federal Magistrates System was Congress' wisdom in allowing each district to experiment, within constitutional and statutory limits, in the flexible use of these judicial officers. The inability to utilize magistrates to conduct preliminary pre-trial discovery case management conferences contained in the present language of the Civil Justice Reform Act of 1990 is inconsistent with the legislative and implementation history of the Magistrates system over the last two decades, as well as the views of the Federal Courts Study Committee. Such limitations could once again lead to case management problems. For example, various district courts in Florida for the last few years have been faced with trials, especially in criminal drug cases involving very complex issues, necessitating extended trial periods of many months. The district judge presiding over such trials should be allowed the flexibility, if they so desire, to have his or her civil cases properly managed by delegating to a magistrate the preliminary pre-trial discovery case management conference. Since the conference must be held within 45 days following the filing of a responsive pleading, and at that conference, dates must be set for: (1) the filing of motions, (2) hearing the motions, and (3) disposing of the motions, it appears that the drafters were aware that few dispositive motions and responses thereto would be pending at that early stage. In reality, all that a district judge needs to do in complying with the basic concept expressed in the Act is to provide the magistrate with the district judge's calendar dates so that an appropriate order can be fashioned and the case properly managed.

HARVEY E. SCHLESINGER
United States Magistrate